93-407

Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1993

MARK GARRINGER,
Petitioner,

In the Matter of:

GEORGE and JOYCE WADE,
Plaintiffs-Appellants.

v.

EDWARD B. HOPPER, II, et al.,
Defendants-Appellees.

On Petition for Writ of Certiorari to
the United States Seventh Circuit
Court of Appeals

Petition for Writ of Certiorari

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QUESTIONS PRESENTED FOR REVIEW

1.] Is it frivolous for an attorney to seek determinations that bankruptcy trustees and recipients of scheduled bankrupt estate property are required by law to account for that property?

2.] Does a court of review need to reduce a statement to writing with authority in the law as to why it is frivolous to seek determinations that bankruptcy trustees and recipients of estate property are required by law to account prior to finding that an appeal seeking this is frivolous?

3.] Is it an appropriate sanction to disbar an attorney for life for a material misrepresentation and disrespectful remarks when there is no rational basis on the record for believing a material misrepresentation or

disrespectful remark was made.

4.] Does a federal court have duties to render a statement in writing to require bankruptcy trustees and recipients of scheduled estate property to account when it appears within the jurisdiction of the court that bankruptcy trustees and recipients of scheduled estate property have failed to account for the property, and petitions seeking the accounting of estate property are before the court.

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OPINIONS BELOW

The opinion of the United States Court of Appeals is unreported and unpublished a copy of which is reproduced in the Appendix attached hereto at 1-12 and hereafter cited as "App. _____."

JURISDICTION

The opinion of the court of appeals was decided on June 17, 1993. App. 1. A Suggestion for Rehearing En Banc was filed by Petitioner (hereafter, Garringer") on July 1, 1993, to the opinion of June 17.

Garringer and Loretta Ruffin, Assistant Clerk of the U.S. Supreme Court, have been advised by the Office of the Clerk of the U.S. Seventh Circuit Court of Appeals that the Suggestion for Rehearing En Banc filed on July 1, 1993, was denied by the Seventh Circuit on July 20, 1993. There has been no statement in

writing by the Seventh Circuit Court of Appeals that has been provided to Garringer to evidence the denial of the Suggestion for Rehearing En Banc by the Seventh Circuit before or after requests by Garringer to the Office of the Clerk of the 7th Circuit that a statement in writing be provided to Garringer for inclusion in the Appendix to this Petition. The Suggestion for Rehearing does not toll the time within which to file a Petition for Writ of Certiorari to the decision of June 17, 1993 in conformity with Rule 13.4 of the Supreme Court.

The Supreme Court has jurisdiction to grant certiorari to review the June 17 opinion of the Seventh Circuit pursuant to 28 U.S.C. §254(1) and Offutt v. United States, 348 U.S. 1, 99 L.Ed 11, 75 S.Ct. 11 (1954); and In Re: McConnell, 370 U.S.

230, 8 L.Ed.2d 434, 82 S.Ct. 1288 (1962).

RULE INVOLVED

Rule 46(c), Federal Rules of Appellate Procedure:

> A court of appeals may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member of the bar for failure to comply with these rules or any rule of the court.

STATEMENT OF THE CASE

From 1988 to the present, Garringer brought 12 appeals to the U.S. Seventh Circuit Court of Appeals stemming from the bankruptcy proceeding of George and Joyce Wade and the U.G. Wade Trucking Inc.,. App. 5. In each appeal, Garringer requested relief that bankruptcy trustee Edward B. Hopper, II, and recipients of the items of property listed on Schedule B-1 of the bankruptcy petition of the U.G. Wade Trucking Inc. shall account for

the items of property listed on Schedule B-1. There has been no statement in writing by the Seventh Circuit concerning the accountability of bankruptcy trustees and recipients of scheduled bankrupt estate property to account for scheduled property, with the sole exception of the opinion of the Seventh Circuit on February 17, 1993, that the Wade's discovery arguments in this case are "entirely without merit". See, George Wade, et ux. v. Edward B. Hopper, II, et al., Case No. 93-188 before the Supreme Court, and In Re: Ulyssus George and Joyce Wade and the U.G. Wade Trucking, Inc., Case No. 93-264 before the Supreme Court. Trustee Hopper and the recipients of property listed on Schedule B-1 have failed to account for 17 out of 20 items listed on Schedule B-1 totaling approximately $82,000.00.

Garringer filed a petition for rehearing and suggestion for rehearing en banc to the opinion of February 17. The Seventh Circuit responded with an Order for Garringer to show cause why he should not be sanctioned pursuant to Rule 46(c) of the Federal Rules of Appellate Procedure on April 22, 1993 (hereafter, "the Order to Show Cause"). App. 13-15. The Order to Show Cause stated that Garringer's petition for rehearing was filed with disrespectful language. Id. The sole example of the disrespectful language quoted in the Order stated:

> The Circuit Court states that it read the proposed complaint. However, the problem must be reading comprehension skills of the Circuit Court. When the proposed amended complaint states [Trustee Hopper "forbeared to discharge his official duties as trustee to recover or attempt to recover Schedule B-1 accounts",] the Circuit Court must not have the reading skills and the capacity to understand basic English and the plain meaning of the laws of the

> United States. [This would explain why no court or tribunal has reached the common sense result of asking what happened to "Cal-Ark" listed on Schedule B-1.]. App. 2; Footnote 1.

The Order to Show Cause also referenced the fact that the February 17 Order held that plaintiffs' second amended complaint governed the dispute in this case and Garringer repeatedly referred to the plaintiffs' third amended complaint which appeared to the Seventh Circuit to amount to a material misrepresentation. App. 14-15. On appeal, and in petition for rehearing, Garringer argued that the failure of the District Court to avail the opportunity for leave to amend the second amended complaint to articulate the discovery of new-found evidence, to wit, evidence of the reduction of missing

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[1] Footnote. Portions of the petition for rehearing omitted by the Order of the Seventh Circuit are included in brackets.

and unaccounted for items of property listed on Schedule B-1 to money immediately before and after the filing of bankruptcy was an error of the District Court. Throughout the Appellants Briefs and the Petition for Rehearing, Garringer referenced the plaintiffs' third amended complaint, for which leave to amend was denied, as the "proposed amended complaint." Order to Show Cause, supra.

Garringer responded to the Order to Show Cause. App. 2. On June 17, 1993, the Seventh Circuit issued the Order from which this petition for review is sought. App. 1-12. Garringer's name was stricken from the roll of attorneys admitted to practice before the Seventh Circuit and his right to practice law before the Court was terminated. App. 12. No term of time for Garringer's suspension was

specified. Id. The opinion cited three additional disrespectful remarks in Garringer's response to the Order to Show Cause as foundation for disbarment. App. 2-3. Garringer attached to his response copies of the cancelled checks of Hartwick issued after the filing of bankruptcy where the item of property listed as "Hartwick" on Schedule B-1 was rendered to money executed "Wade Trucking" and "Robert Sheaffer", an attorney with a professional relationship with bankruptcy trustee Edward B. Hopper, II, along with a letter of Hartwick to Hopper's counsel in the bankruptcy enclosing the copies of the checks in response to a demand for the amount listed on Schedule B-1.

There is nothing to evidence for the record in the Wade bankruptcy as to what right, title, or interest attorney

Sheaffer had to the proceeds of "Hartwick" listed on Schedule B-1, and the Wades and Garringer have been consistent that attorney Sheaffer had no right, title, or interest to the property.[2] The three "disrespectful remarks" by Garringer cited by the Seventh Circuit in the Order of June 17 were based on the following passage of Garringer's response:

> (1) Any person with a 12th grade education who can read and write and spell his name who has a basic understanding of the laws of the United States would have to ask the obvious [upon reviewing the cancelled checks of Hartwick executed "Robert Sheaffer" and "Wade Trucking" after the filing

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[2] Footnote. Successor Trustee Neil E. Shook, appointed after Hoppers removal as trustee, stated at hearing on January 4-5, 1990, that he saw "absolutely no reason" why attorney Sheaffer should account for the item of property listed as "Hartwick" on Schedule B-1. [Transcript of Hearing January 4-5, 1990, Volume II, page 246.]

of bankruptcy petitions. Who on earth would have the authority to sign an instrument "Wade Trucking" after the filing of bankruptcy petitions to render an item of property listed on the schedules to money? Of course, only the trustee in bankruptcy would have such authority.... However, the Circuit Court is unable to comprehend this fact. (2) Garringer must assume from the facts of record placed before the Circuit Court that the Circuit Court has problems with basic reading skills and understanding of the laws of the United States. If the Circuit Court does not, then the Circuit Court, upon reading the pleadings and documentary material before it by the Wades and Garringer, would be duty-bound to take action pursuant to duties articulated in 28 U.S.C. Sections 453 and 1651. However, the Circuit Court has not done so. To assume that the Circuit Court does have basic reading skills and comprehension of the plain laws of the United States, and has knowingly failed to take action, is to assume the worst. In other words, what Garringer said in the example [cited in Order to Show Cause] supra, is (3) the nicest thing that can be said from the facts appearing on the record before the Circuit Court. [Note: the three disrespectful remarks cited in the opinion at App. 2-3 are enumerated and underlined.]

The Seventh Circuit determined that the Court had expended unwarranted time and

energy sifting through the mountain of spurious paper filed by Garringer, that the Court has been faced with misleading contentions and blatant disrespect, and that Mr. Garringer has repeatedly filed briefs full of immaterial, impertinent and scandalous matter and attacked the integrity of the members of the Court. App. 10-11.

REASONS WHY THIS PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED

This petition demonstrates substantial departures from the laws of the United States by the Seventh Circuit in this matter. This petition demonstrates that there is an important question raised concerning the accountability of bankruptcy trustees and recipients of bankrupt estate property which has not been, but should be, settled by this court. Furthermore, this petition

demonstrates that the opinion of the Seventh Circuit is a far departure from the accepted and usual course of proceedings of this type. Finally, this petition demonstrates that Garringer has been deprived of a fundamental right to due process guaranteed by the Fifth Amendment of the Constitution and that Garringer is entitled to further relief.

I.

THE RECORD IN THIS MATTER REFLECTS A SUBSTANTIAL DEPARTURE FROM THE LAWS OF THE UNITED STATES

The laws of the United States are plain that bankruptcy trustees and recipients of bankrupt estate property are required to account for the public record. 11 U.S.C. §704; Bankruptcy Rule 6002. The accountability of a bankruptcy trustee in the common law is well-established. In Re Reinboth, 157 F. 672 (2nd Cir.-1907); In Re Kuhn Brothers, 243 F. 277 (7th Cir.

-1916), cert. den., 242 U.S. 629, 61 L.Ed 536, 37 S.Ct. 14.

In this matter, bankruptcy trustee Edward B. Hopper and recipients of property on Schedule B-1 have failed to address 17 items of property listed on Schedule B-1 of the bankruptcy petition of the U.G. Wade Trucking Inc., totaling approximately $82,000.00, and account for what right or interest the recipients had to the property. No court or tribunal has required them to do so. Garringer has filed 12 petitions for assistance and appeals in this matter on behalf of the Wades requesting that trustee Hopper account for the items of property listed on Schedule B-1 and that recipients of the property account for what right or interest they have to the property. There has been no statement in writing by the Seventh Circuit concerning the

accountability of bankruptcy trustees and recipients of scheduled bankrupt estate property to account for the property listed on the schedules. This represents a sanctioning by the Seventh Circuit of a substantial departure from the laws of the United States and a far departure from the usual and accepted course of bankruptcy proceedings.

Instead, the record reflects that Hopper, Hopper's attorneys, and recipients of property on Schedule B-1 assert an attorney-client privilege over documents concerning the collections of items of property listed on Schedule B-1.

In Re Grand Jury Proceedings and In Re Jim's Garage, Inc., 119 Bankruptcy Reporter 945 (E.D. Mich-1990) (hereafter referenced as "In Re Jim's Garage") articulated the duties of a former bankruptcy trustee to account for items

of scheduled property in a final report. The district court in the case of Jim's Garage, Inc., noted that there is no authority or prccedent for allowing a privilege to documents concerning collections of assets of a bankrupt estate, and, that if bankruptcy trustees were allowed a privilege "bankruptcy trustees would henceforth be licensed not only to abscond with assets of the bankrupt estate entrusted to their case, but also with any records and evidence of their misconduct." 119 Bankruptcy Reporter 954-955. Such is the case here. The issue of the applicability of the privilege in this matter has been before the lower courts numerous times and no court or tribunal has made a statement in writing concerning the applicability of the privilege.

The substantial departure from the laws

of the United States concerning accountability of bankruptcy trustees and recipients of bankrupt estate property to account for scheduled property, and the far departure from the usual and accepted bankruptcy practice, and the mute sanctioning of this departure by the Seventh Circuit after 12 appeals by Garringer in this matter is central to the merits of the decision of the Seventh Circuit for which review is sought by this petition. If the Seventh Circuit had reduced a statement in writing on the questions raised by Garringer's 12 appeals consistent with the laws of the United States and the usual and accepted bankruptcy practice, to wit, bankruptcy trustees and recipients of estate property are required by law to account for estate property, then it would have been unnecessary for Garringer to file 12

appeals on behalf of the Wades. If trustee Hopper and recipients of property listed on Schedule B-1 could account for this property consistent with the law, then there would be no statements by Garringer that the Seventh Circuit referenced as "scandalous matter" and "unfounded defamatory allegations" [App. 11.] and what Garringer references as facts of record. If Hopper and recipients of Schedule B-1 property are unable to account for what right or interest the recipients have to the property, then Garringer's "scandalous matter" and "unfounded defamatory allegations" are simply the truth.

If on the other hand, the Seventh Circuit would have reduced a statement to writing addressing the questions raised by Garringer's 12 appeals that bankruptcy trustees and recipients of

estate property do not have to account for estate property, then Garringer would have a plain important question in conflict with other circuits and an embarrassment on petition for review by this court. Again, 12 appeals on this question would have been unnecessary.

Hopefully, the Seventh Circuit would cite authority in the laws of the United States that trustees and recipients of estate property do not have to account for estate property and Garringer would have been placed on notice why his appeals in this matter were frivolous and further appeals would not have been made by Garringer.

II.

THERE IS AN IMPORTANT QUESTION RAISED CONCERNING THE ACCOUNTABILITY OF BANKRUPTCY TRUSTEES AND RECIPIENTS OF BANKRUPT ESTATE PROPERTY WHICH HAS NOT BEEN, BUT SHOULD BE SETTLED BY THIS COURT

The United States General Accounting Office at the direction of Congress has prepared a report titled "BANKRUPTCY TRUSTEES, Oversight Improved, But Extent of Trustee Fraud is Unknown", GAO/GDD-83-54, January 1993. At page ten, the report cites challenges facing the system including "insufficient authority to hold trustees accountable for departures from fiduciary responsibilities." At pages two and three, the report notes that concerns over the integrity of the bankruptcy system, particularly as it related to oversight of trustees, led Congress to pass the Bankruptcy Reform Act in 1978. Apparently, Congress is still concerned over problems here. To determine the extent of trustee fraud, the GAO visited Indianapolis, Indiana, because it was among the regions from which Congress received complaints of trustee fraud. Id.

at pages 5-6. The GAO audited certain bankruptcies and conducted interviews of which the Wade bankruptcy was one. Id. The conclusion of the report is that the trustee system is vulnerable to fraud. Id.

Fraud by bankruptcy trustees in the federal judicial district of the Southern District of Indiana has been the subject of massive public attention and comment in the Southern District of Indiana. Reproduced in the Appendix are two Editorials published in The Indianapolis Star titled "Bankruptcy Questions" and "Is Justice Bankrupt?" App. 16-21.[3] It notes concerns about the integrity of the bankruptcy system in the Southern District of Indiana and suggests what happens to officers of the court who ask where the money went in bankrupt estates in the Southern District of Indiana. Id.

The GAO Reort and the Editorials of the The Indianapolis Star reflect that there is an important question here affecting not only Garringer, but affecting the millions of persons who are parties in bankruptcy each year as debtors or creditors, and affecting the public confidence in the integrity of the judicial system. Id; GAO Report at 1.

The Circuits are consistent concerning the affirmative duties of trustees to account for property of the estate. Re Reinboth, supra, Re Kuhn Bros, supra, Carson, Pirie, Scott & Co. v. Turner, (1932, CA6 Mich) 61 F.2d 693; Leonard v. Vrooman, (1967, CA9 Cal) 383 F.2d 556, cert. den. 390 U.S. 925, 19 L.Ed.2d 985,

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[3] Footnote. Original clippings of the editorials have been provided to the Clerk of the Supreme Court with this petition for inspection.

88 S.Ct. 856. However, most of this common law is ancient and apparently fallen into desuetude. The Supreme Court has established liability for failure of bankruptcy trustees to account. Mosser v. Darrow, 341 U.S. 267, 95 L.Ed 9227, 71 S.Ct. 680 (1951).

However, the Supreme Court has yet to directly address the affirmative duties of bankruptcy trustees to account for scheduled estate property, to provide information concerning administration of the estate and to file a final report accounting for the items of property listed on the schedules for public record pursuant to 11 U.S.C. §704. This is demonstrated by the opinion In re: Jim's Garage, supra, which relies on the plain meaning of 11 U.S.C. §704(2)(7) and (9) without reference to a Supreme Court decision to hang its hat on. 119 Bank-

ruptcy Reporter 948-955.

In Pepper v. Litton, 308 U.S. 295, 306-307 60 S.Ct. 283, 84 L.Ed 281 (1940) the Supreme Court held that when a fiduciary's dealings are challenged, his dealings are subject to strict scrutiny. The absence of public record by trustee Hopper to account for "Cal-Ark" listed on Schedule B-1, and by attorney Robert Sheaffer to account for any right or interest in the proceeds of "Hartwick" listed on Schedule B-1, evidences the conflict of this proceeding with the ancient principles of fiduciary law articulated in Pepper v. Litton.

Garringer has brought 12 appeals on behalf of the Wades based on the principle that bankruptcy trustees and attorneys who collect scheduled estate property are "fiduciaries" within the meaning of Pepper v. Litton. The Seventh

Circuit has determined that Garringer's appeals are frivolous without elaboration or authority on the questions raised as to duties of bankruptcy trustees and custodians of estate property to account. It is clear from the careful editing of Garringer's "disrespectful remarks" in the Order to Show Cause and the decision sought for review by this petition what the Seventh Circuit does not want to talk about or address, to wit, questions concerning what happened to items of property listed on Schedule B-1 and duties of fiduciaries to account for this property. The facts of this case and the opinion of the Seventh Circuit constitute a far departure from the accepted and usual course of a Chapter 7 bankruptcy case calling for the exercise of this courts supervisory power. Otherwise, if the opinion of the Seventh Circuit is

left to stand, then bankruptcy trustees and recipients of estate property are henceforth licensed to walk away from their duty to account, while lawyers like Garringer who question this practice are disbarred. The ancient principle of fiduciary law in Pepper v. Litton (1940), supra, have not been articulated in recent Supreme Court opinion and needs to be reaffirmed by a plain Supreme Court decision, making it clear that bankruptcy trustees and recipients of estate property are "fiduciaries", and when their dealings are challenged, the federal courts have a strict duty to require full public accountings of property entrusted.

Government taxing authorities are the sole priority creditors in the Wade bankruptcy. 11 U.S.C. §507. "Cal-Ark" and "Hartwick" listed on Schedule B-1

represent substantial sums that should have gone to the Treasury of the United States. A decision by the Supreme Court reaffirming the ancient principles of Pepper v. Litton will result in millions to the Treasury of the United States. Likewise, since "Cal-Ark" and "Hartwick" reported the sums on Schedule B-1 as paid on Form 1099's of the Internal Revenue Service, there is all of this money the government could save in not having to chase indigent persons such as the Wades as principal officers of a corporation for taxes on income realized by others.

III

THERE IS A FAR DEPARTURE FROM THE USUAL AND ACCEPTED COURSE OF PROCEEDINGS OF THIS TYPE

The fact that Garringer's privilege to practice law before the Seventh Circuit has been terminated without specific term of suspension means that, apparently,

Garringer has been suspended for life from practice before the Seventh Circuit. A review of the sanctions imposed by the cases cited by the Seventh Circuit in the opinion demonstrates that this is a far departure from the usual and accepted course of proceedings of this type. App. 7-9.

The Order to Show Cause of the Seventh Circuit states that in Garringer's Petition for Rehearing, Garringer repeatedly refers to the plaintiffs' third amended complaint and that this conduct appears to amount to a "material misrepresentation." App. 7. Garringer repeatedly referenced the third amended complaint as "the proposed complaint" App. 15. Garringer, on behalf of his clients, moved to amend the complaint upon discovery of evidence that attorney Robert Sheaffer had collected "Hartwick"

and "H&P Leasing" on Schedule B-1 after defendants' motions to dismiss on failure of specificity to articulate the frauds committed, i.e., Garringer and his clients could not articulate where items on Schedule B-1 went. There was no change in legal theories or operative facts in the proposed complaint, but simply the specificity desired by the defendants. Garringer raised on appeal the error of the district court's refusal to allow amendment when leave to amend must be "freely given". Foman v. Davis, 371 U.S. 178, 182, 9 L.Ed.2d 222, 83 S.Ct. 227 (1962). Garringer referenced the new-found facts in the proposed complaint warranting leave to amend "to facilitate a proper decision on the merits." Conley v. Gibson, 355 U.S. 42, 48, 2 L.Ed.2d 80, 78 S.Ct. 99 (1957).

While it may have appeared to the

Seventh Circuit that there was a "material misrepresentation" by Garringer in referencing the proposed complaint, the Seventh Circuit fails to reference a statement by Garringer where the material misrepresentation appeared, or a rational basis for concluding that it was a material misrepresentation. That is because there was none. The failure of the Seventh Circuit to reference where the material misrepresentation appeared, or a rational basis to conclude that it was a material misrepresentation, is a far departure from the usual and accepted practice in the sanctioning of attorneys. In matters like this, "speculation cannot take over where proofs fail." In re: Sawyer, 360 U.S. 622, 628, 3 L.Ed.2d 1473, 79 S.Ct. 1376 (1959). In the opinion of the Seventh Circuit, Garringer "failed to adequately explain the

misleading character of his petition for rehearing." App.2. That is because he was not availed the opportunity to know what he was accused of in violation of his rights guaranteed by the due process clause of the Fifth Amendment, and in conflict with the decisions of this court in In re; Sawyer, supra, and In re: Ruffalo, 390 U.S. 961, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1973) reh. den. 391 U.S. 961, 88 S.Ct. 1833, 20 L.Ed.2d 874.

The opinion of the Seventh Circuit references the first of 12 "frivolous appeals" by Garringer, case no. 88-2618, attaching thereto Schedule B-1 and requesting that trustee Hopper and recipients of the property account for this money. The failure of the Seventh Circuit to address the question raised by, at some point, the accountability of bankruptcy trustees and recipients of

state property is a far departure from the usual and accepted practice and the business of the courts to address meritorious questions placed before the courts. Why is it frivolous to request that bankruptcy trustees and recipients of scheduled estate property to account for the property. From the first appeal, case no. 88-2618, to the decision this petition seeks to review, the Seventh Circuit has failed to articulate a rational basis why it is frivolous to seek the accountability of bankruptcy trustees and recipients of estate property, and to cite authority in the laws of the United States that this is so. That is because we know there is none.

The Seventh Circuit has determined that "Garringer has repeatedly filed briefs full of immaterial, impertinent and

scandalous matter." App. 11.

The adjectives of this comment by the Seventh Circuit without reference to a specific statement made by Garringer that is "immaterial,impertinent or scandalous" is a far departure from the usual and accepted course of proceedings of this nature. Is it "immaterial" to ask what happened to "Cal-Ark" or what right or interest attorney Sheaffer had to "Hartwick" on Schedule B-1? Apparently so, because this is what the Seventh Circuit does not want to talk about. The vituperative level of the comments on Garringer's conduct is a far departure from the usual and accepted practice.

Comment by Garringer referenced by the opinion, "Any person with a 12th grade education who can read and write and spell his name who has a basic understanding of the laws of the United States

would have to ask the obvious ...." [App. 3. Statement of Case, supra.], any person in this class would have to ask themselves what right attorney Robert Sheaffer had to execute "U.G. Wade Trucking, Inc.," on the back of instruments to reduce scheduled assets to money after the filing of bankruptcy petitions on the facts of this case. Id.

Since this comment is determined to be "a disrespectful remark" made by Garringer it is clear that the judges of the Seventh Circuit have voluntary placed themselves in the class of persons who cannot read and write and spell their name who do not understand what Garringer is talking about. Thus, the comment by Garringer referenced in the Order to Show Cause [App. 5] coming to the conclusion that judges of the Seventh Circuit must have problems with reading skills was

warranted by the facts appearing before Garringer on the record. This was infallible deductive logic. Apparently, the Seventh Circuit is confused and does not understand what Garringer is saying when he says bankruptcy trustees and recipients of estate property are required by law to account and trustee Hopper and attorney Sheaffer have failed to account for the proceeds of Schedule B-1. Garringer must assume this, because for Garringer to assume that the Seventh Circuit <u>does</u> understand what he is talking about, is to assume that the judges of the Seventh Circuit are willfully evading their duties pursuant to 28 U.S.C. §453 to make decisions that are agreeable to the laws and the Constitution of the United States. Garringer has not done this out of his respect for the decorum of the courts as

he is duty-bound to have. Nevertheless, the Seventh Circuit goes from "Garringer's disrespectful language attacking the court" [App. 1.] to the conclusion that Garringer is "attacking the integrity of the members of the court." [App. 5.] Questioning a persons level of reading skills is not attacking that person's integrity. There are honest illiterate persons and criminal scholars. The reasoning used by the Seventh Circuit, i.e., questioning literacy is an attack on integrity, is a far departure. A plain definitive opinion by this court concerning the accountability of bankruptcy trustees and recipients of estate property will dispel the confusion shown by the Seventh Circuit concerning the accountability of bankruptcy trustees and recipients of estate property and be a touchstone for all the Circuits.

Finally, Garringer is deprived of his due process rights because he is deprived of information required by law to be public record, i.e., information concerning who received items of property on Schedule B-1 and the right of recipients to that property. In the event that the recipients of this property had no legal right to the property, this would vindicate and exculpate Garringer from the accusation that he is making impertinent and scandalous comments.

CONCLUSION

For the foregoing reasons, this Petition has demonstrated substantial departures from the laws of the United States, far departures from the usual and accepted course of proceedings, and important questions of gravity and general importance warranting the discretionary supervisory authority of

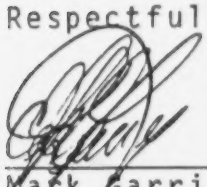
this court. Fields v. United States, 205 U.S. 292, 51 L.Ed 807, 27 S.Ct. 543 (1907).

PRECISE RELIEF REQUESTED

For the foregoing reasons the Petitioner prays that writ of certiorari shall issue and, (1) an opinion by this this court that the federal courts have strict duties to require accountings by bankruptcy trustees and recipients of scheduled estate property when it appears within the jurisdiction of the court that bankruptcy trustees and recipients of bankrupt estate property have failed to account, and petitions seeking accountings are before the court, (2) an opinion by this court that it is not frivolous for an attorney to seek determinations that bankruptcy trustees and recipients of bankrupt estate property are required by law to account

for that property, (3) an opinion by this court that it is inappropriate to disbar an attorney for life for a material misrepresentation and disrespectful remarks when there is no rational basis on the record for believing a material misrepresentation or disrespectful remark was made, (4) such other and further relief as proper in the premises.

Respectfully submitted by:



Mark Garringer
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APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

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App. 1

UNITED STATE COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

June 17, 1993

Before

Hon. KENNETH F. RIPPLE, Circuit Judge

Hon. MICHAEL S. KANNE, Circuit Judge

Hon. ANN CLAIRE WILLIAMS, Circuit Judge*

GEORGE WADE and JOYCE WADE Plaintiffs-Appellants, No. 91-3892	) Appeal from the) United States) District Court) for the) Southern) District of) Indiana,) Indianapolis,) Division.
v.	) No. 88 C 65
EDWARD B. HOPPER, II, et al., Defendants-Appellees.	) Larry J.) McKinney, Judge

ORDER

Before us is the difficult and unpleasant task of sanctioning an errant attorney. Following a decision adverse to his clients, George and Joyce Wade, we order-

ed attorney Mark Garringer to show cause why he should not be sanctioned for material contained in a written pleading he filed with this court. Specifically, we directed Mr. Garringer to explain the use of disrespectful language and what appeared to be a material misrepresentation to the court, both found in his petition for rehearing in this case.

Mr. Garringer's response failed to adequately explain the misleading character of his petition for rehearing. To justify his disrespectful language impugning the intellectual integrity of the court, Mr. Garringer claims his comments were "the nicest thing that can be said," and implies that the court is

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* The Honorable Ann Claire Williams, District Judge for the Northern District of Illinois, is sitting by designation.

fraudulently refusing to enforce his clients rights. In addition to his failure to justify his conduct, Mr. Garringer in his response to our "show cause" order, continues to direct disrespectful remarks to this court. The following are examples:

> Any person with a 12th grade education who can read and write and spell his name who has a basic understanding of the laws of the United States would have to ask the obvious ...

> Garringer must assume that the Circuit Court has problems with basic reading skills and understanding of the laws of the United States.

As described above, Mr. Garringer was given notice of his improper behavior and an opportunity to explain or justify it. No hearing was requested by him, and we make our determination, regarding the imposition of sanctions, based on the written response submitted by Mr.

Garringer.

In his response, Mr. Garringer has not advanced any rational or acceptable basis for his conduct. Mr. Garringer's remarks in his petition for rehearing go far beyond fair comment or opinion, and were intended to cast the court in a false light concerning its intellectual integrity and qualifications in an apparent attempt to justify our rejection of his arguments in our decision on the merits. Such conduct is contrary to professional standards and warrants the imposition of sanctions under Rule 46 of the Federal Rule of Appellate Procedure.

Having determined that sanctions are required, we need now to determine the appropriate disciplinary action. To make this decision, we consider not only the conduct at issue here, but also the record of Mr. Garringer at the bar of

this court.

Before this court, from 1988 to the present, Mr. Garringer has brought 12 appeals stemming from the same bankruptcy proceeding that was the basis for this action. Two other unrelated cases have resulted in yet another 11 appeals brought by Mr. Garringer. Within less than five years, Mr. Garringer has been sanctioned by this court four times.

Mr. Garringer's first brush with sanctions resulted in a $250 fine for a frivolous appeal. Wade v. Judge Tinder, No. 88-2618 (7th Cir. September 8, 1989). On September 18, 1992, Mr. Garringer was fined $2000 for two frivolous appeals and a performance that "fell far short of the level of advocacy demanded by this Court." In re Continental Steel Corp., No. 91-3368 (7th Cir. September 18, 1992)

($1000 fine); In re Continental Steel Corp., No. 91-3387 (7th Cir. September 18, 1992) ($1000 fine). Ten days later, Mr. Garringer received yet another $1000 fine for a frivolous appeal. In re Continental Steel Corp., No. 91-1416 (7th Cir. September 28, 1992).

In November 1992, Mr. Garringer informed this court that he was indigent and could not pay the fines in the Continental Steel cases. In response, we relieved Mr. Garringer of his liability in one case, Continental Steel Corp., No. 91-1416 (7th Cir. January 29, 1993), and permitted him to pay off the fines in the other two cases at a rate of $100 a month. Continental Steel Corp., Nos. 91-3368 & 91-3387 (7th Cir. December 18, 1992).

This review of Mr. Garringer's history

of conduct for which disciplinary sanctions have been imposed demonstrates that monetary sanction do not deter Mr. Garringer from inappropriate behavior. Consequently, we believe a more serious sanction is necessary.

Rule 46(c) provides as follows:

> A court of appeals may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with these rules or any rule of court.

The Rule's clear language permits us to impose any appropriate disciplinary action. In the past we have imposed the following sanctions pursuant to Rule 46 (c): (1) monetary fines; see Williams v. Leache, 938 F.2d 769 (7th Cir. 1991) ($1000 fine for frivolous appeal and failure to follow court rules; Mays v.

Chicago Sun-Times, 865 F.2d 134 (7th Cir) Cert. cert. denied, 493 U.S. 900, 110 S. Ct. 259 (1989) ($1000 fine for filing brief that contained statements grounded neither in fact or law); United States v. Stillwell, 810 F.2d 135 (7th Cir. 1987) ($500 fine for failure to follow court orders); United States v. Dominquez, 810 F.2d 128 (7th Cir. 1987) ($1000 fine for late filings); United States v. Bush, 797 F.2d 536 (7th Cir. 1986) ($500 fine for failure to follow court orders); El Gharabli v. INS, 796 F.2d 935 (7th Cir. 1986) ($500 fine for misleading court about the complexity of a case in order to obtain an extension), (2) referral of attorney to the state bar disciplinary committee; see Stillwell, 810 F.2d at 136 (referral for failing to follow court orders); Dominquez, 810 F.2d at 129

(referral for late notice of appeal and (3) suspension from practice before this court. See In re John L. Gubbins, 890 F.2d 30 (7th Cir. 1989) (three month suspension for a pattern of late filings); In re John M. Beck, 902 F.2d 5 (7th Cir. 1990) (one year suspension for incompetent brief filed by court appointed attorney in a criminal case.)

In determining the appropriate sanction for Mr. Garringer, we are guided by the following passages:

> The sanctions imposed in each case should be carefully tailored to the circumstances of the particular situation. We must protect the litigants and possible future clients from further misfeasance. We may legitimately consider the deterrent effect which our action will have within the bar. Finally, we must consider the effect of the sanctions on the individual lawyer involved. Appropriate corrective action ought to require the lawyer to reassess the manner in which he or she is fulfilling professional obligations

> and afford, when appropriate, an opportunity for reform. We must also remember that state bar officials have great responsibilities in this area and have a right to expect our cooperation. Often, they are in a far better position to assess the overall professional performance of the attorney.

Dominquez, 810 F.2d at 129.

> [The attorney's] action has also required members of this court and its staff to expend a good deal of time and attention which could have been used elsewhere. The United States pays the salaries of the judges of this court and its staff. In wasting their time, [the attorney] also wasted the government's money.

Stillwell, 810 F.2d at 136.

Not only has this court expended an unwarranted amount of time and energy sifting through the mountain of spurious paper filed by Mr. Garringer, but also we note that unfortunately Mr. Garringer's behavior is becoming more egregious. In this case, beyond irrelevant arguments, we have been faced with misleading

contentions and blatant disrespect. We heretofore warned attorneys that "baseless attacks on the integrity of this court" willnot be tolerated. United States v. Byrski, 854 F.2d 955, 964 (7th Cir.1988).

In In re Jafree, 759 F.2d 604 (7th Cir. 1985), we struck from the roll of the bar of the court an attorney who engaged in behavior very similar to Mr. Garringer's, stating:

> "[T]he principles of right and justice as understood by the federal courts not only permit but in fact demand that attorneys who make unfounded defamatory accusations, . . and thereby demonstrate a gross failure of professional judgment and character [,] be disciplined for the protection of the public."

Id. at 609.

Like Mr. Jafree, Mr. Garringer has repeatedly filed brief full of immaterial impertinent and scandalous matter, attacked the integrity of members of the

court, and failed to exercise competent professional judgment. The only way to insure that Mr. Garringer cannot continue to abuse the judicial resources of this court is to terminate his privilege to practice before this court. See Beck, 902 F.2d at 7.

For the foregoing reasons, it is ORDERED that Mark Garringer's name be stricken from the roll of attorneys admitted to practice before this court and we direct the Clerk to send copies of this order to the Disciplinary Commission of the Supreme Court of Indiana.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

April 22, 1993

Before

Hon. KENNETH F. RIPPLE, Circuit Judge

Hon. MICHAEL S. KANNE, Circuit Judge

Hon. Ann Claire Williams, District Judge*

GEORGE WADE and JOYCE WADE Plaintiffs-Appellants	) Appeal from the United States District Court for the Southern
No. 91-3892	) District of Indiana,
v.	) Indianapolis Division.
	) Larry J. McKinney, Judge
EDWARD B. HOPPER, II, et al., Defendants-Appellees,	)

ORDER

On consideration of the petition for rehearing and suggestion for rehearing en banc, no judge in active service has requested a vote thereon, and all the

judges on the original panel have voted to deny the petition. Accordingly,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing en banc be, and the same is hereby DENIED.

Furthermore, plaintiffs-appellants attorney Mark Garringer may be subject to the imposition of sanctions under Fed. R. App. P. 46(c).

In our February 17th order, we held that the plaintiffs' second amended complaint governed this dispute and our analysis. Mr. Garringer's petition for rehearing virtually ignores this holding and repeatedly refers us to the plaintiffs' third amended complaint. This conduct

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* The Honorable Ann Claire Williams, District Judge for the Northern District of Illinois, is sitting by designation.

appears to amount to a material misrepresentation.

In addition, the petition filed by Mr. Garringer is full of disrespectful language directed to the court. The following is an example:

> The Circuit Court states that it read the proposed complaint. However, the problem must be (sic) reading comprehension skills of the Circuit Court. When the proposed complaint states... the Circuit Court must not have the reading skills and the capacity to understand basic English and the plain meaning of the Laws of the United States.

Mr. Garringer is ordered to SHOW CAUSE why sanction should not be imposed pursuant to Rule 46(c) for the foregoing behavior. The response of Mr. Garringer must be filed no later than May 6, 1993.

App. 16

THE INDIANAPOLIS STAR

Where the spirit of the Lord is,
there is Liberty

II Corinthians 3:17

EUGENE C. PULLIAM -1899-1975
Publisher 1944 1975
EUGENE S. PULLIAM, Publisher

"Let the people know the facts and the country will be saved"- Abraham Lincoln

Bankruptcy Questions

Bankruptcy may seem like a boring topic until it hits you in the wallet. That was the case hundreds of Indiana folks, many retired, who awoke one morning in 1988 to find their life savings threatened with bankruptcy proceeding by Firstmark Corp.

The painful fact is that each year more people are affected by bankruptcy than by all other civil and criminal litigation combined. That makes bankruptcy law a specialty that is lucrative, growing and ripe for abuse.

Recognizing problems, Congress modernized bankruptcy law in 1978 for the sake of creditors as well as the consumers and business debtors. It was the first major revision in 45 years. The controversial changes were unpopular among some lawyers and federal judges.

In a 15-part series of prize-winning stories in 1987, The Indianapolis Star detailed a long list of questionable practices in Indiana. At the time, Vice President Dan Quayle, then in the U.S. Senate, noted that "implementation of the new bankruptcy system is urgently needed in my home state of Indiana."

With the appointment of U.S. Trustee Kevin B. McCarthy, an experienced and aggressive attorney with Indiana ties, the way Indiana courts handle bankruptcy cases began to change for the better in late 1988. McCarthy's hard-hitting style irritated some old-timers. He was rightly intent on running the system by the book and on being a tough watchdog against the cronyism and fraud which the trustee system was designed to halt.

But growing resistance to McCarthy's work in Indiana and Southern Illinois culminated in March when he was relieved of his duties, at least temporarily. There are several worrisome aspects to this unfortunate situation.

Big problems developed for McCarthy after, among other things, he suggested fraud and racketerring might be involved in the operation of Indianapolis-based Overland Express Inc. and its affiliated national truck driver training school, Superior Training Services.

The two entities are now in bankruptcy proceedings. The U.S. Department of Education has brought a $366 million

civil suit against Superior alleging it ripped off the government through financial aid programs.

As in the Firstmark case, where about 3,500 savers were faced with the loss of some $57 million, McCarthty's job in the Overland Express case involved trying to find out what happened to the money.

Now the question is what happened to McCarthy? The next question is what happened to the U.S. Trustee system?

Without better support from the Department of Justice, the system designed to guard against corruption now appears to be the subject of considerable abuse itself.

If the Washington bureaucrats who tried to tame the public's bankruptcy watchdog in Indiana and Southern Illinois have their way, the system will never work effectively to serve either justice or the public.

U.S. Attorney General Dick Thornburgh could do the public a great favor by promptly reviewing the trustee system and by turning loose the FBI to complete work on a mess that may extend into the federal court system.

Started after the The Star series, those investigations now also seem to be stalled.

What is going on here, Mr. Attorney General?

App. 19

THE INDIANAPOLIS STAR

Where the spirit of the Lord is,
there is Liberity

II Corinthians 3:17

EUGENE C. PULLIAM- 1899 1975
Publisher
EUGENE S. PULLIAM, Publisher

"Let the people know the facts and the country will be saved."-Abrahan Lincoln

Is Justice Bankrupt

It is no wonder that investors in the bankrupt Firstmark Corp. have taken their case to the streets, protesting last week in front of the Federal Courts Building in Indianapolis.

Many are elderly and lost their life savings. All of them were bilked. What is worse, no one seems to care.

They are mad not only at the results of the 18-month-old Firstmark case in which they have been offered three-and-a-half cents on the dollar while lawyers are reaping hundreds of thousands of dollars in fees. They are mad at the whole system of bankruptcy "justice."

A sign read: "BANKRUPTCY IS A RACKET."

How right they may be. Two things have become quite clear in the Firstmark case.

One is that Congress certainly acted wisely in the early 1980s to create within the Department of Justice the office of United States Trustee in bankruptcy. The office was needed and rightly intended to be the official "watchdog" agency to guard against fraud and other historically prevalent abuses by those who sometimes made fortunes while handling the financial misfortunes of others.

Sadly it has also become clear during the course of this case, that in Indiana the good intentions of Congress and the important interests of the public have been diverted.

For the last year Indiana has been without the regular services of a resident U.S. Trustee. The appointment of attorney Kevin McCarthy as the trustee for Indiana and the Southern District of Illinois had come in 1987 after a 15-part series in The Indianapolis Star detailed a long list of questionable bankruptcy practices.

But in one of several incredible events, the very able McCarthy was forced to resign last March. It is clear now, from the record of congressional and Justice Department investigations, that Trustee McCarthy was probably set up and targeted for ouster as trustee because he was becoming too effective in his job as a "whistle blower" on abuse in the bankruptcy system.

In view of this, it is even more incred-

ible that he has not been reinstated. In all fairness to the busy schedules of the U.S. senators from Indiana and the many important matter before the Justice Department, possibly it is merely taking more time than expected to restore McCarthy to his former position.

The harsh fact is that meanwhile the bankruptcy system here is in grave danger of drifting back into shark infested waters. One result is that innocent bankruptcy victims like the Firstmark investors feel especially vulnerable.

Many of those investors are now equating the loss of McCarthy to their own losses in the Firstmark case, where the former trustee's early efforts to track down missing millions were thwarted.

Another of the protesters' signs read: "McCARTHY WAS OUR ONLY ALLY -- BRING HIM BACK."

Indeed if justice and public trust are to be restored to the bankruptcy system here, that must be the starting point. To do otherwise would be to declare the bankruptcy of justice itself.